

REMARKS

The Examiner has required an election in the present application between:

Species I, illustrated in Fig(s). 1-11, which corresponds to claims 1-20;

Species II, illustrated in Fig(s). 12-19, which corresponds to claims 21-42;

Species III, illustrated in Fig(s). 20-27, which corresponds to claims 43-56;

Species IV, illustrated in Fig(s). 28-30, which corresponds to claims 57, 59, 61, 62; and

Species V, illustrated in Fig(s). 31.

For the purpose of examination of the present application, Applicants elect Species I, illustrated in Fig(s). 1-11, with traverse.

Claim(s) 1-20 are directed to the elected species. As acknowledged by the Examiner, none of the claims are generic.

Applicants appreciate the Examiner's position expressed in the Restriction Requirement dated October 10, 2008. However, Applicants must still respectfully traverse the Requirement and wish to clarify the traversal from their prior response of July 23, 2008.

The Examiner alleges that Applicants' Amendment filed March 20, 2008 "appears to be non-responsive" based on the Examiner's allegation that Applicants have "only elected and presented claims that appear to be exclusively directed towards Species V" (*see Office Action, page 3, item 4*). The Examiner indicates Figure 31 is directed towards the alleged Species V.

Applicants respectfully disagree on two grounds:

(1) The Examiner has erred procedurally in asserting that Applicants' Amendment of March 20, 2008 is non-responsive to his Restriction Requirement of May 28, 2008.

Applicants' Amendment was made in response to the first Restriction Requirement dated July 27, 2007, which did not require election of subject matter corresponding to Figure 31. The Examiner may not hold Applicants' prior Amendment non-responsive to a Restriction Requirement that had not yet been made. If the Examiner requires restriction at this time, he may do so with respect to the claims in their current form.

(2) The elected and presented claims are not exclusively directed towards Figure 31.

The issue at hand appears directed towards Applicants' prior Amendment to recite a peer-to-peer communications system in each of the independent claims. The Restriction Requirement of May 28, 2008 indicated Figure 31 as directed towards an independent Species V showing a peer-to-peer communications system. In the action dated October 10, 2008, the Examiner argues that "Applicant amended the elected claims towards the non-elected system of the Figure 31," which discloses the use of a peer-to-peer communications system (*see Office Action, page 2, item 2*), and that "Species I-IV each require the use of a camera server" (*see Office Action, page 2, item 3*).

Regarding elected Species I, Applicants submit that although Figures 1-11 show a camera server, the embodiment of the invention regarding the functionality shown in, e.g., Figures 8 and 11 is not necessarily limited to being in association with a camera server. As described in paragraphs [0246]-[0248], a peer-to-peer communications system may be used to implement the embodiments described earlier in the specification, corresponding to Species I-IV as originally presented. Accordingly, the elected claims are not "exclusively directed towards Species V" as alleged by the Examiner (*see Office Action, page 3, item 4*).

Applicants submit that on the basis of the Examiner's assertion that Figure 31 represents a distinct species, there may have been originally eight species present instead of the proffered five. These eight would correspond to the features of the indicated Species I-IV as implemented in association with a camera server in addition to the indicated Species I-IV as implemented in association with a peer-to-peer communications system as shown in Figure 31. In any event, the independent claims have all been amended to recite a peer-to-peer communications system, rendering the point moot. Applicants assert that, as directed to the amended claims, Species I incorporates an

embodiment shown in Figures 1-11 and 31 and as described in corresponding paragraphs of the specification, including paragraphs [0246]-[0248].

All of the independent claims currently recite a peer-to-peer communication system. Applicants maintain their election of Species I, claims 1-20, and request examination of these claims on their merits.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders, Registration No. 60,166 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: November 7, 2008

Respectfully submitted,

By 
Michael R. Cammarata
Registration No.: 39,491
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant